

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

CHARLES EDWARD WHEELER

PLAINTIFF

VS.

CIVIL NO. 1:95CV215-D-D

CHRYSLER MOTORS CORPORATION
and SAM STEVENS MOTORS, INC.

DEFENDANTS

MEMORANDUM OPINION

Charles Wheeler, disappointed with the 1993 Dodge Intrepid he purchased from the defendants, has sued for breach of the Mississippi Motor Vehicle Enforcement Act (MCA §63-17-151, et seq.), the Magnuson-Moss Act (15 U.S.C. §2301, et seq.), Uniform Commercial Code and of an express warranty. Defendants have moved for summary judgment on all claims. After review of the file and the briefs submitted by the parties, the court is of the opinion that the motion should be **granted in part and denied in part** as follows:

According to the complaint Wheeler purchased his new vehicle from Sam Stevens Motors, Inc. on or about May 3, 1993, financed it through Chrysler Credit Corporation, and opted for a 12 year/12,000 mile basic warranty and 7 year/70,000 mile powertrain warranty. At about 34,000 miles plaintiff sought service for a loud noise around the windows, a defective transmission, a brake light which constantly remained lighted and a cruise light which did not light, poor gas mileage, a rattle in the driver's door, a window off channel in that same door, a power steering fluid leak and chipped paint. Plaintiff contends that he never received proper repairs and seeks a full refund of the purchase price, actual and punitive damages and attorney fees.

Motor Vehicle Warranty Enforcement Act claim. Defendants allege that the statute of limitations bars Wheeler's Motor Vehicle Warranty Enforcement Act claim. That Act provides:

§63-17-159(6). Any action brought under §63-17-151, et seq. shall be commenced within one (1) year following expiration of the terms, conditions or limitations of the express warranty, or within eighteen (18) months following the date of the original delivery of the motor vehicle to a consumer, whichever is earlier.

The vehicle was delivered to Wheeler on May 3 or 4, 1993; the complaint was filed April 25, 1995,

almost twenty-four months after date of delivery. This claim, then, is time-barred, and summary judgment will be granted as to any claim under the Motor Vehicle Warranty Enforcement Act.

Magnuson-Moss Act claim. The Magnuson-Moss Act does not contain an express limitations period; therefore, federal courts must apply the time limit of the most analogous state statute, here, the Motor Vehicle Warranty Enforcement Act. Lowe v. Volkswagen of America, Inc., 879 F.Supp. 28 (E.D.Pa. 1995). As set out above, that statute of limitations runs eighteen months after date of delivery of the vehicle. This claim, likewise, is time-barred, and summary judgment will be granted as to any claim under the Magnuson-Moss Act.

Uniform Commercial Code. Plaintiff cites claims of breach of implied and express warranties under the UCC provisions §75-2-313, §75-2-314, §75-2-315 and lack of good faith. The only express warranty which had not expired at the time Wheeler brought his vehicle into the dealer with his complaints would be those associated with the powertrain. Although plaintiff has designated no expert witness to prove his case as to breach of express warranty on the powertrain, the court will leave this issue as to powertrain only open to proof at trial. Summary judgment will be granted as to any breach of express warranty other than powertrain claims. Claims of breach of implied warranty remain viable.

Breach of contract. Again, the only applicable warranty provisions subject to trial in this cause are those coming under the 7/70 powertrain warranty. Summary judgment will be granted as to any claim of breach of express warranty under general contract law other than powertrain claims.

An order in accordance with this opinion will be entered separately.

THIS _____ day of June, 1996.

UNITED STATES MAGISTRATE JUDGE

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ORDER

In accordance with the opinion issued this day, the defendants' motion for summary judgment be and hereby is granted as to all issues raised under the Motor Vehicle Warranty Enforcement Act and Magnuson-Moss Act. Summary judgment is hereby granted as to all claims raised under MCA §75-2-313 and general law of contract except as to the 7/70 powertrain warranty only.

IT IS SO ORDERED.

THIS _____ day of June, 1996.

UNITED STATES MAGISTRATE JUDGE